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Dated: July 24, 2009 Signature: Donna Forbit
(Donna Forbit)

Docket No.: 66729/P034US/10614706
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Roy Schoenberg

Application No.: 10/824,705 Confirmation No.: 6791

Filed: April 15, 2004 Art Unit: 3626

For: AUTOMATED DATA ENTRY METHOD AND SYSTEM Examiner: K. K. Rapillo

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the rejections presented in the Final Office Action dated April 15, 2009 for the above-identified application, which were maintained in the Advisory Action dated July 10, 2009. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reason(s) stated below.

REASONS FOR REQUESTED PRE-APPEAL BRIEF REVIEW

Claims 1, 2, 4-21, and 24-41 are pending in the present application. All claims stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,076,436 to Ross et al. (hereinafter "*Ross*") in view of U.S. Patent Application Publication No. 2003/0097573 to Wheeler et al. (hereinafter "*Wheeler*"). Applicant respectfully submits that the outstanding claim rejections are improper, and thus requests pre-appeal brief review of the rejected claims in light of the remarks presented herein.

REMARKS

Rejections Under 35 U.S.C. §103 over *Ross* in view of *Wheeler*

Independent claim 1 recites:

> A data entry method comprising:
> in a computer-based medical record including a plurality of data fields, defining one or more data fields for which desired field data is to be acquired; and
> automatically populating at least one of the one or more data fields with desired field data from a data source, said automatically populating comprising:
> receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer, a schedule for contacting said data source to prompt said data source for the desired field data for said at least one data field;
> triggering, by said computer-based application, contacting said data source in possession of the desired field data in accordance with said schedule; and
> receiving, by said computer-based application, the desired field data from the data source. (Emphasis added).

The applied combination of *Ross* and *Wheeler* fails to teach or suggest at least the above-emphasized limitations of claim 1. As discussed further below, the applied combination of *Ross* and *Wheeler* does not teach or suggest at least the following:

- Automatically populating at least one data field of a computer-based medical record (indeed, *Ross* expressly teaches a user manually populating fields of a medical record, and *Wheeler* is not directed to medical records at all).
- Receiving by a computer-based application a schedule for contacting a data source, and triggering by the computer-based application contacting of a data source in possession of desired field data in accordance with the schedule.

Automatically populating at least one data field of a computer-based medical record

Ross permits manual entry of data into medical records, and does not appear to teach or suggest any technique for automatically populating at least one data field of a medical record by contacting a data source in accordance with a received schedule, as recited by claim 1. *Wheeler* is directed generally to communicating electronically regarding accounts, and addresses various uses of public and private keys, etc. for achieving secured communication. *Wheeler* does not appear to address any technique for updating medical records whatsoever, and, like *Ross*, does not appear to teach or suggest any technique for automatically populating at least one data field of a medical record by contacting a data source in accordance with a received schedule.

The Final Office Action concedes (at page 3 thereof) that *Ross* does not teach or suggest the recited automatically populating of one or more data fields of a medical record as recited by claim 1. However, the Final Office Action contends (at page 3 thereof) that *Wheeler* discloses this limitation, citing to paragraphs 0130 and 0299 of *Wheeler*. Paragraph 0130 expressly describes with reference to block 414 of its figure 4a that additional information is obtained from a prospective account holder. This cited paragraph of *Wheeler* does not provide any teaching or suggestion of automatically populating any data field(s). Paragraph 0299 of *Wheeler* mentions the use of cookies for automatically filling in certain fields of a web site display that is used in an ordering process for ordering a product or service from the website.

However, *Wheeler* simply makes no mention of and appears to have no applicability whatsoever to medical records. As is well known in the art, medical records are special types of data records due to the particularly personal and sensitive nature of the information they contain and the restrictive access to such information to only certain authorized users, such as a patient's physician. While *Wheeler* proposes using cookies for automatically filling in fields of a web site's ordering form for assisting a purchaser in ordering a product or service, *Wheeler* provides no hint whatsoever of automatically populating data fields of a patient's medical record. Further, it is unclear how, if at all, cookies (which are populated with information based on a user's browsing history) may be employed for populating data fields of a patient's medical record. Claim 1 expressly recites "automatically populating at least one of the one or more data fields [of the computer-based medical record] with desired field data from a data source". There is simply no suggestion regarding how browsing history or user preference information contained in the cookies referenced in *Wheeler* may be employed for

automatically populating a field of patient's medical record with desired data from a data source. Thus, the applied combination of *Ross* and *Wheeler* fails to teach or suggest this limitation of claim 1.

Receiving a schedule and contacting the data source in accordance with the schedule

Additionally, claim 1 recites that the automatically populating comprises receiving a schedule for contacting the data source to prompt the data source for the desired field data, and triggering contact of the data source in accordance with the schedule. The Final Office Action appears to cite to Figure 5 and column 11, lines 13-19 of *Ross* as disclosing such a schedule. Column 11, lines 13-19 of *Ross* provides:

> 124. Consultation Module – Consultants can be selected from a directory. The directory displays all consultants or consultants filtered for medical specialty and/or managed care affiliations. A record of the consultation, along with timing and documentation of the discussion are recorded. If the consultant does not return a call within a department specified time period, an alert is generated.

This relied-upon portion of *Ross* does not teach or suggest a schedule for contacting a data source to prompt the data source for the desired field data to be automatically populated in a medical record. Rather, this portion of *Ross* merely refers to contacting a consultant, recording time of discussion with the consultant, and generating an alert if the consultant does not return a call within a specified time period. Simply no mention is made in the cited portion of *Ross* for receiving a schedule for contacting a data source to prompt the data source for data to be automatically populated in a medical record, as recited by claim 1.

Further, *Wheeler* fails to teach or suggest such a schedule. As discussed above, the Examiner relies upon *Wheeler* as disclosing the recited automatically populating a field of a medical record. However, claim 1 recites that such automatically populating comprises receiving a schedule for contacting the data source, and *Wheeler* fails to teach or suggest such receipt of a schedule. *Wheeler's* use of cookies for automatically populating fields of a web site's order form does not include any such receipt or use of such a schedule for contacting a data source. Cookies are commonly used by websites for maintaining specific information about users, such as site preferences or the contents of their electronic shopping carts.

Conclusion

At best, even if the system of *Ross* were implemented as a web site, similar to that of *Wheeler*, the use of cookies as suggested by *Wheeler* might aid a user of *Ross'* system for automatically populating certain fields of data as established by the user (e.g., the user preferences, etc.). However, even making this leap and adaptation of *Ross* system to come close to that proposed by *Wheeler*, the

use of cookies as suggested by *Wheeler* does not include any receipt or use of a schedule for contacting a data source as expressly recited by claim 1. Thus, even when giving the best attempt at combining the disparate teachings of *Ross* and *Wheeler*, the resulting combination fails to teach or suggest the limitations recited by claim 1.

In response to the above arguments, the Advisory Action merely contends: "In regard to the claim 1, the Applicant argues the Ross and Wheeler references individually, rather than in combination; thus, the Applicant's argument is not persuasive." Thus, the Advisory Action does not offer any further explanation of how the applied references teach or suggest the above-noted limitations, but instead merely contends that Applicant has failed to argue the references "in combination". Applicant disagrees. As can been above, Applicant's arguments do address the applied combination of *Ross* and *Wheeler* and clearly explains why the applied combination, when considered as a whole, fails to teach or suggest the above-noted limitations. Therefore, the outstanding rejection should be overturned.

Independent claims 14, 20, and 33 are also believed to be patentable over the applied combination of *Ross* and *Wheeler* for reasons similar to those discussed above with claim 1. In addition, each of dependent claims 2, 4-13, 15-19, 21, 24-32, and 34-41 depends either directly or indirectly from one of independent claims 1, 14, 20 and 33, and thus each dependent claim are allowable over the applied art at least based on their respective independent claims for the reasons discussed above.

Applicant respectfully requests that the review panel reverse the outstanding rejection of the claims. If a fee is due with this response, please charge our Deposit Account No. 50-3948, under Order No. 66729/P034US/10614706 from which the undersigned is authorized to draw.

Dated: July 24, 2009

Respectfully submitted,

By _____

Jody C. Bishop
Registration No.: 44,034
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8007
(214) 855-8200 (Fax)
Attorney for Applicant